

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL L LUCKERT,  
Plaintiff,  
  
v.  
  
O. SMITH, et al.,  
Defendants.

Case No. [19-cv-08204-PJH](#)

**ORDER OF DISMISSAL WITH LEAVE  
TO AMEND**

Plaintiff, a former detainee, proceeds with a pro se civil rights complaint under 42 U.S.C. § 1983.

**DISCUSSION**

**STANDARD OF REVIEW**

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests."" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). Although in order to state a claim a complaint "does not need detailed

1 factual allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment]  
2 to relief' requires more than labels and conclusions, and a formulaic recitation of the  
3 elements of a cause of action will not do. . . . Factual allegations must be enough to  
4 raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550  
5 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer "enough facts to state  
6 a claim to relief that is plausible on its face." *Id.* at 570. The United States Supreme  
7 Court has recently explained the "plausible on its face" standard of *Twombly*: "While legal  
8 conclusions can provide the framework of a complaint, they must be supported by factual  
9 allegations. When there are well-pleaded factual allegations, a court should assume their  
10 veracity and then determine whether they plausibly give rise to an entitlement to relief."  
11 *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

12 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential  
13 elements: (1) that a right secured by the Constitution or laws of the United States was  
14 violated, and (2) that the alleged deprivation was committed by a person acting under the  
15 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

### 16 **LEGAL CLAIMS**

17 Plaintiff alleges that several police officers and a library security guard used  
18 excessive force during an arrest and that he was denied medical care while in jail.

19 An allegation of the use of excessive force by a law enforcement officer in  
20 effectuating an arrest states a valid claim under 42 U.S.C. § 1983. *See Rutherford v. City*  
21 *of Berkeley*, 780 F.2d 1444, 1447 (9th Cir. 1986), *overruled on other grounds by Graham*  
22 *v. Connor*, 490 U.S. 386 (1989); *see also Byrd v. Phoenix Police Dep't*, 885 F.3d 639,  
23 641-42 (9th Cir. 2018) (pro se allegations that police officers "beat the crap out of" plaintiff  
24 and caused him severe injury enough to support a legally cognizable claim under §  
25 1983). Excessive force claims which arise in the context of an arrest or investigatory stop  
26 of a free citizen are analyzed under the Fourth Amendment reasonableness standard.  
27 *See Graham v. Connor*, 490 U.S. 386, 394-95 (1989); *Forrester v. City of San Diego*, 25  
28 F.3d 804, 806 (9th Cir. 1994).

1 A claim for a violation of a pretrial detainee's right to adequate medical care arises  
2 under the Fourteenth Amendment rather than the Eighth Amendment. See *Gordon v.*  
3 *County of Orange*, 888 F.3d 1118, 1122 & n.4 (9th Cir. 2018). The claim is evaluated  
4 under an objective deliberate indifference standard.

5 [T]he elements of a pretrial detainee's medical care claim  
6 against an individual defendant under the due process clause  
7 of the Fourteenth Amendment are: (i) the defendant made an  
8 intentional decision with respect to the conditions under which  
9 the plaintiff was confined; (ii) those conditions put the plaintiff  
10 at substantial risk of suffering serious harm; (iii) the defendant  
11 did not take reasonable available measures to abate that risk,  
12 even though a reasonable official in the circumstances would  
13 have appreciated the high degree of risk involved—making the  
14 consequences of the defendant's conduct obvious; and (iv) by  
15 not taking such measures, the defendant caused the plaintiff's  
16 injuries.

17 *Id.* at 1125. With regard to the third element, the defendant's conduct must be  
18 objectively unreasonable -- "a test that will necessarily turn[] on the facts and  
19 circumstances of each particular case." *Id.* (citations and internal quotation marks  
20 omitted). The four-part test articulated in *Gordon* requires the plaintiff to prove more than  
21 negligence, but less than subjective intent --something akin to reckless disregard. *Id.*

22 In order to recover damages for an allegedly unconstitutional conviction or  
23 imprisonment, or for other harm caused by actions whose unlawfulness would render a  
24 conviction or sentence invalid, a 42 U.S.C. § 1983 plaintiff must prove that the conviction  
25 or sentence has been reversed on direct appeal, expunged by executive order, declared  
26 invalid by a state tribunal authorized to make such determination, or called into question  
27 by a federal court's issuance of a writ of habeas corpus. *Heck v. Humphrey*, 512 U.S.  
28 477, 486-487 (1994). A claim for damages bearing that relationship to a conviction or  
sentence that has not been so invalidated is not cognizable under § 1983. *Id.* at 487.

29 In *Wallace v. Kato*, 549 U.S. 384, 393 (2007), the Court held that the "Heck rule for  
30 deferred accrual is called into play only when there exists 'a conviction or sentence that  
31 has not been . . . invalidated,' that is to say, an 'outstanding criminal judgment.'" *Id.* at  
32 391-93 (quoting *Heck*, 512 U.S. at 486-87). The *Heck* rule delays accrual only if there is

1 an existing conviction on the date the statute of limitations begins to run, which in the  
2 case of wrongful arrest or wrongful imprisonment claims is when the plaintiff's  
3 confinement is no longer without legal process, but rather becomes a confinement  
4 pursuant to legal process – that is, for example, when he or she is bound over by a  
5 magistrate or arraigned on charges. *Id.* at 389-90. The Court stated that the contention  
6 that “an action which would impugn *an anticipated future conviction* cannot be brought  
7 until that conviction occurs and is set aside” goes “well beyond *Heck*” and rejected it. *Id.*  
8 at 393 (italics in original). Although the Court was only considering when the statute of  
9 limitations began running on a false arrest/false imprisonment claim, the discussion  
10 quoted suggests that *Heck* does not apply if there is no extant conviction – for instance, if  
11 plaintiff has only been arrested or charged.

12 If a plaintiff files a § 1983 false arrest claim before he or she is convicted, or files  
13 any other claim related to rulings that likely will be made in a pending or anticipated  
14 criminal trial, it is within the power of the district court, and accords with common practice,  
15 to stay the civil action until the criminal case or the likelihood of a criminal case is ended.  
16 *Id.* at 393-94. If the plaintiff is then convicted, and if the stayed civil suit would impugn  
17 that conviction, *Heck* requires dismissal; otherwise, the case may proceed. *Id.* at 394.

18 Plaintiff alleges that several police officers and a library security guard used  
19 excessive force in arresting him and while transporting him and placing him in jail. He  
20 also alleges that he was placed in a cell for two to three days and did not receive any  
21 medical care.

22 Plaintiff was charged with resisting, delaying, or obstructing a police officer and a  
23 public agency official among other charges. Docket No. 7 at 12. It is unclear if he has  
24 been convicted, if the charges are still pending or if the charges have been dropped.  
25 Plaintiff's allegations regarding the excessive force may be barred by *Heck* because the  
26 allegations of excessive force directly relate to several of the underlying charges. The  
27 complaint is dismissed to provide more information regarding the status of the criminal  
28 charges. He may wish to provide more exhibits regarding the criminal prosecution. If the

1 charges are still pending this case may be stayed.

2 With respect to the allegations that he was denied medical care, plaintiff must also  
3 provide more information. He does not elaborate on this claim and fails to identify any  
4 specific defendant and how they violated his constitutional rights. Plaintiff should provide  
5 more information regarding these allegations and describe what defendants he sought  
6 medical care from and how they denied care. He should also describe his injuries and  
7 what medical care was needed.

8 **CONCLUSION**

9 1. The complaint is **DISMISSED** with leave to amend in accordance with the  
10 standards set forth above. The amended complaint must be filed no later than **March 27,**  
11 **2020**, and must include the caption and civil case number used in this order and the  
12 words AMENDED COMPLAINT on the first page. Because an amended complaint  
13 completely replaces the original complaint, plaintiff must include in it all the claims he  
14 wishes to present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may  
15 not incorporate material from the original complaint by reference. Failure to file amended  
16 complaint may result in dismissal of this action.

17 2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the  
18 court informed of any change of address by filing a separate paper with the clerk headed  
19 "Notice of Change of Address," and must comply with the court's orders in a timely  
20 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute  
21 pursuant to Federal Rule of Civil Procedure 41(b).

22 **IT IS SO ORDERED.**

23 Dated: March 2, 2020

24 /s/ Phyllis J. Hamilton

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PHYLLIS J. HAMILTON  
26 United States District Judge  
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